

**IN THE MATTER OF FACT-FINDING  
BETWEEN**

<b>CITY OF EATON</b>	)	<b>CASE NOS. 2016-MED-03-0257</b>
	)	<b>2016-MED-03-0258</b>
	)	
<b>AND</b>	)	
	)	<b><u>FINDINGS</u></b>
	)	<b>AND</b>
<b>FRATERNAL ORDER OF POLICE</b>	)	<b><u>RECOMMENDATIONS</u></b>
<b>OHIO LABOR COUNCIL, INC.</b>	)	

**JAMES M. MANCINI, FACT-FINDER**

**APPEARANCES:**

**FOR THE UNION**

**Barry L. Gray**  
**Senior Staff Representative FOP/OLC**

**FOR THE CITY**

**John J. Krock**  
**Vice President**  
**Clemans, Nelson & Associates**

**SUBMISSION**

This matter concerns fact-finding proceedings between the City of Eaton (hereinafter referred to as the Employer or City) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter referred to as the Union or FOP). The State Employment Relations Board (SERB) duly appointed the undersigned as fact-finder in this matter. The fact-finding proceedings were conducted on August 30, 2016 in Eaton, Ohio.

The fact-finding proceedings were conducted pursuant to the Ohio Collective Bargaining Law as well as the rules and regulations of SERB. During the fact-finding proceeding, this fact-finder attempted mediation of the issues at impasse. The issues remaining for this fact-finder's consideration are more fully set forth in this report.

The bargaining unit consists of four Dispatchers and ten Patrol Officers of the City of Eaton Police Division.

This fact-finder in rendering the following findings of fact and the recommendations on the issues at impasse has taken into consideration the criteria set forth in Ohio Revised Code Section 4117-14(G)(6)(7). Therefore, the following recommendations on the issues at impasse are hereby submitted.

**1. WAGES**

The Union proposes wage increases of 4% in each year of the Contract. It also proposes to reduce the number of steps for dispatchers from eight steps to six steps.

The Employer proposes for the new three year Agreement that a \$750 lump sum signing bonus be payable with the first full pay in January 2017. The Employer further proposes a 1.5% increase effective January 1, 2018, and an additional 1.5% increase effective January 1, 2019. The Employer opposes any change in the number of steps for dispatchers.

The Employer contends that the City does not have the ability to pay for the Union's proposed 4% wage increases. It also maintains that due to a decline in revenues over the past five years or so it can only provide for a lump sum payment in the first year of the new three year Agreement.

The City's Finance Director stated that since 2013, all Police Division expenditures have been paid through the Public Safety Fund with the General Fund subsidizing the fund through fund balance transfers. The Finance Director indicated that certain revenue sources have declined over the past five years. For example, intergovernmental revenues have declined significantly since 2010. This reduction results from the State of Ohio reducing or eliminating revenue sources. Estate tax receipts from 2010 to 2013 averaged \$190,000 per year. However, this revenue stream has been eliminated entirely by the State. In addition, the State has reduced the amount of local government funds that is being distributed to municipalities resulting in a

significant drop in funding. There has also been a decrease in ambulance removal fees as a result of the decreased mileage for ambulance service with the opening of a local emergency department. The Finance Director pointed out that for 2015, expenditures exceeded revenues by approximately \$112,000. The Finance Director indicated that the City expects a similar result for the current year.

The City cites wage comparables with respect to police officer wages. Those comparables indicate that Eaton police officers' top wage of \$27.66 per hour is well above the average of \$25.41 per hour for the top police officer wages in comparable jurisdictions. Even with respect to cities not in Hamilton or Montgomery counties, the average wage for police officers in Eaton is above the average for the area. The City also points out that the wage increases for the bargaining unit here have been greater than that provided to non-bargaining unit employees in the City since 2011. The total increase for police officers since that time has been about 8.5% as compared to 7% received by non-bargaining unit employees.

The City also cites wage comparables with reference to dispatchers which indicate that Eaton dispatcher wages are only slightly below the average for the comparable cities noted. The average dispatcher wages in these other jurisdictions is \$20.94 which is only slightly above the current Eaton dispatcher wages of \$20.43 per hour.

The Union maintains that the City does have the ability to fund its proposed wage increases. It cites the current year tax revenues which are up slightly over that of the prior years. Revenues through June 30, 2016 have increased by about \$84,000 over

that received during the first six months of the prior year. Moreover, the Union points out that even though expenditures did exceed revenues in 2015, the City still had a healthy year-end balance in its General Fund of \$1,776,000. The Union further cites the previous fact-finder's report which was issued at the beginning of this year for 2016 wage increases wherein the City's current argument that it lacked the ability to fund any increase was rejected. As a result, that fact-finder recommended a 2.5% wage increase for the current year.

The Union also cited police officer wage comparables. The Union points out that the pay for Eaton police officers is about \$6,200 or almost 11% less than the average of comparable cities in the southwest and west central regions. The Union also notes that Eaton police officers do not receive longevity, educational incentives, or pension pickup as do some of the comparable cities.

With respect to the Union's request to reduce the number of steps on the dispatcher wage scale, the Union cites wage comparability data. The wage comparables indicate that the City of Eaton dispatchers' beginning pay is \$6,200 or just over 19% less the average in comparable cities in the southwest and west central regions. Likewise, the top pay for dispatchers is almost 10% less than the average of other comparable cities. The Union also points out that the dispatchers did not receive longevity, educational incentives, or pension pickups as did some of the other comparable cities.

ANALYSIS – Based upon a careful review of the evidence, this fact-finder would recommend that there be a 2.5% increase in wages in each year of the Agreement for both the police and dispatcher units. Such increases would bring the City of Eaton

police officer wages as well as dispatcher wages more into line with the average paid in comparable cities in the southwest and west central regions. There is also every indication that the City has the available resources to provide for 2.5% wage increases even considering the operational needs of the department.

It was established through evidence of wage comparables that the City of Eaton police officers' top pay is about \$6,200 or almost 11% less than the average of comparable cities in the southwest and west central regions. It should be noted that the population of these other cities is similar to that found in Eaton. The City of Eaton police officers' top wage is \$57,552 as compared to the average for this region of similarly sized communities of \$63,805. Therefore, the 2.5% wage increases recommended herein would serve to bring the police officer wages here more into line with that provided to similarly situated police officers in the area.

This fact-finder has further determined that the City has the ability to fund the proposed wage increases from currently available resources. While it was shown that in 2015, expenditures in the General Fund exceeded revenues by about \$112,000, it was established that the City's General Fund still had a year-end cash balance of \$1,776,418. Moreover, it was shown that for the first six months of 2016, revenues actually exceeded expenditures by about \$111,000. The Finance Director indicated that the City expects that for the current year expenditures will exceed revenues by about \$50,000. Therefore, there is every indication that the City will still have a relatively healthy year-end balance in its General Fund and as a result it must be held that the City has the ability to fund the proposed 2.5% increase in wages for the current year.

This fact-finder would also like to add that the previous fact-finder who handled the reopener for the parties at the beginning of this year also found that the City had the ability to fund a 2.5% increase at that time for January 1, 2016. That fact-finder rejected the City's argument that it did not have the ability to fund such an increase. Likewise, this fact-finder has determined that there is every indication from a close analysis of the financial data that the City has the ability to fund the proposed 2.5% wage increases.

With respect to the dispatcher issue, this fact-finder finds that there was insufficient basis established for reducing the number of steps in the dispatcher wage scale. The 2.5% wage increases recommended herein would also be for the dispatchers as well as the police unit. This will serve to bring the dispatcher wages more into line with that found in other comparable jurisdictions.

### **RECOMMENDATION**

With respect to Wages, this fact-finder makes the following recommendations:

Effective January 1, 2017 – Two and one-half percent (2.5%) increase.

Effective January 1, 2018 – Two and one-half percent (2.5%) increase.

Effective January 1, 2019 – Two and one-half percent (2.5%) Increase.

For Dispatchers – The above increases would be applicable, but this fact-finder does not recommend any change in the current number of steps for dispatchers.

## **2. HOURS OF WORK AND OVERTIME**

The Employer has proposed several modifications to Article 19. First, it proposes under Section 19.2 to add language that would limit the amount of time an employee can take off for vacation, comp time, or personal leave to four days per month after the schedule has been posted. The Employer's proposal would also provide that requests for time off have to be submitted at least seven days in advance of the effective date of the schedule.

The Union has proposed under Section 19.2 that a Memorandum of Understanding previously agreed to by the parties should be incorporated into the Collective Bargaining Agreement. The MOU basically would require bargaining unit members to vote on changing their work schedule.

With respect to Section 19.7, Compensatory Time Off or Cash Payments, the Employer proposes a forty hour cap for the total accumulation and use of compensatory time per calendar year. The Union has proposed keeping the current language which is that the maximum accumulation of compensatory time shall be 100 hours.

With respect to Section 19.11, Bargaining Unit Overtime, the Employer is proposing that part-time employees, both in the rank of Dispatcher and Patrol Officer, be permitted to work overtime before offering to bargaining unit employees. The Union has proposed the current language which provides that if there is a need for overtime, bargaining unit members within their respective classification shall have the first opportunity to work overtime before overtime is offered to non-bargaining unit members.

ANALYSIS – With respect to the changes proposed by the parties with reference to Section 19.2, this fact-finder recommends that the current language be retained. There was insufficient basis established for the Employer’s proposed cap on the amount of vacation, comp time, and personal leave that an employee may take off per month after the schedule is posted. As noted by the Union, the types of leave are already at the approval of the Employer. There was no justification established for placing additional restrictions on employees’ right to take these types of leave.

Likewise, this fact-finder does not find any basis for incorporating into Section 19.2 language from a Memorandum of Understanding that would essentially allow employees to vote on their change in the work schedule. The evidence indicated that such language had previously been in the parties’ Agreement but in 2008 was removed during the negotiation process. There simply was no justification shown to now include in the contract the prior provision which was removed from the Collective Bargaining Agreement.

With respect to Section 19.7, this fact-finder would recommend that current language be retained without any change. There was no justification shown for the Employer’s proposal for a forty hour cap for the total accumulation and use of compensatory time per calendar year. In the prior three year Agreement, the parties specifically agreed that in the third year, the cap would be established at 100 hours per calendar year. Therefore, this fact-finder has determined that it would only be reasonable to retain the compensatory time cap at 100 hours as was agreed upon by the parties for the third year of their most recent Agreement.

With respect to Section 19.11, this fact-finder would recommend that there be no change in the current language. The current provision appears to be reasonable. It provides that if there is a need for overtime, bargaining unit members shall have the first opportunity to work overtime before overtime is offered to non-bargaining unit members. This fact-finder would recommend that this language be retained.

### **RECOMMENDATION**

With respect to Article 19, Hours of Work and Overtime, this fact-finder makes the following recommendations:

Section 19.2, Work Schedule – Current language, no change.

Section 19.7, Compensatory Time Off or Cash Payments – Current language,  
no change.

Section 19.11, Bargaining Unit Overtime – Current language, no change.

### **3. SHIFT ASSIGNMENTS**

The current Section 21.1 of the Agreement allows employees to bid or select their shift assignments by seniority in March and September of each year. Under the Employer's proposal, the employees would still be able to bid each six month period, but they would only choose their shift assignments once per year. The Employer is also proposing language that if an officer has below average activity according to their annual performance evaluation they will lose their opportunity to select their shift and the Chief would place them on the shift that he determines is in the best interest of the department. The Union objects to the Employer's proposals and request that current language be retained.

Section 21.2 provides that if a job vacancy occurs in the bargaining unit, it will be offered first to the most qualified senior employee and then continuing in order of seniority to the least senior qualified individual who may be assigned involuntarily. The Employer proposes that if a vacancy occurs in the bargaining unit, it will be filled at the discretion of the Chief until the next bidding period. The Union proposes to retain current language.

ANALYSIS – This fact-finder would recommend that for both Section 21.1 and Section 21.2 of the Agreement, the current language be retained with no change. There was insufficient basis established for the Employer's proposal regarding Sections 21.1. The current provision which allows employees to bid or select their shift in March and September of each year appears to be reasonable and there is every indication that it has worked well in the past.

This fact-finder also does not find any basis for the Employer's proposed language which would allow an officer to be placed on the shift of the Chief's choice if they have below average activity according to their annual performance evaluation. There was no showing made that such a provision is warranted. Again, the current Section 21.1 appears to be reasonable and there is no indication that there has been any problems with allowing employees to bid their shift assignment each six months.

With respect to Section 21.2, once again the current language appears to be reasonable by stating that if a job vacancy occurs it will be offered first to the most senior qualified individual. There was no basis established for the Employer's proposal to change this provision to allow the position to be filled at the discretion of the Chief until the next bidding period.

### **RECOMMENDATION**

With respect to Article 21, Shift Assignments, this fact-finder recommends as follows:

Section 21.1 – Current language, no change.

Section 21.2 – Current language, no change.

#### **4. STAFFING**

The Union has proposed to amend Article 23 to require the Employer to staff two Uniform Patrol Officers on duty at all times. Currently, this article requires two employees to be scheduled concurrently on the duty shift with both uniform management and non-bargaining unit employees included in this required total. The Employer rejects the Union's proposal and proposes that the current Staffing Provision remain the same.

The Union contends that the proposed language change for Section 23.1 of the Staffing Article is needed so as to assure adequate backup on dangerous calls. The Union claims that there have been incidents where adequate backup by a second unit was not provided. The Union proposes to add language which would ensure that the patrol officers on duty have readily available assistance by having at least two patrol officers on each shift.

The City argues that uniform supervisors are always available to provide backup for patrol officers. In certain dangerous situations, the two sergeants and Chief are available to provide a second unit if necessary. The City contends that there was only one situation where a patrol officer did not have the backup needed but that this was an unusual situation and did not represent what typically takes place.

ANALYSIS – This fact-finder has determined that there should be no change in the current Staffing Provision. The Union has made a forceful argument that adequate backup should always be available for patrol officers on dangerous calls. However, there was only one incident cited where adequate backup may not have been provided to a patrol officer responding to a dangerous call. Other than that one incident, it appears that

the department has provided proper backup to patrol officers. It was shown that the two sergeants and Chief are available to provide the second unit when needed on dangerous calls. There is every indication therefore that the current Section 23.1 language has worked well for the parties.

Moreover, the language proposed by the Union would amount in effect to a Minimum Manning provision. As the Chief noted, the department would have to hire additional personnel in order to meet the requirements of the Union's proposed language. Considering the City's financial circumstances, it would appear to this fact-finder that such a minimum staffing proposal would not be appropriate at this current time. It should also be noted that there was no showing made that such a provision is found in other contacts in the area.

### **RECOMMENDATION**

It is the recommendation of this fact-finder with respect to Staffing, that the current provision remain the same.

Section 23.1 – Current language, no change.

## **5. MISCELLANEOUS**

The Union proposes to add additional language to Article 41 which would provide that if the City contracts out bargaining unit work, the successor shall honor the Agreement and retain the City's employees for the duration of this Agreement.

The City has proposed language whereby if the City contracts out bargaining unit work, it will notify the Union at least thirty days in advance and would agree to meet with the Union to discuss the effects of such contracting out.

The Union maintains that its language is needed because there have been discussions between the Employer and the County Sheriff's Office concerning the elimination of the dispatchers at the City of Eaton with the Sheriff's Office taking over the dispatching requirements. The Union seeks to give its dispatcher unit as much assurance as possible as to what could occur. The language which it has proposed is included in other contracts such as in the City of Celina agreement.

The City points out that talks between the County Sheriff and City Council regarding the Sheriff taking over the countywide 911 have broken off between the parties. However, there has been a lot of discussion at the bargaining table here concerning the issue and the City presented a reasonable counter as noted. Again, the City's proposed language which would require the City to notify the Union at least thirty days prior to eliminating the City's dispatch center and contracting with another agency. The City emphasizes that its proposal would not be considered mid-term bargaining but a discussion on how other aspects of the Agreement will be applied such as those relating to layoffs and payment of accrued benefits.

ANALYSIS – This fact-finder has determined that the proposed language offered by the City for a new Section 41.8 is reasonable and should be incorporated into the parties’ Agreement. It appears that there have been preliminary talks between the County Sheriff and Eaton City Council for the Sheriff to takeover countywide 911 which would include the City’s dispatch center. However, it appears that the talks between the two parties broke off several months ago. The City’s proposal would provide that if it agrees to contract out the dispatcher bargaining unit work, it would notify the Union at least thirty days in advance to discuss the effects of such contracting out. Most importantly, the meeting between the City and the Union would involve a discussion of all aspects of the current Agreement and how it would be applied. Therefore, this fact-finder has determined that the new Section 41.8 offered by the City should be included in the parties’ Agreement.

### **RECOMMENDATION**

It is the recommendation of this fact-finder that there be a new Section 41.8 as proposed by the City as set forth below:

Section 41.8 – If the city contracts out bargaining unit work, it will notify the Union at least thirty (30) days in advance and agrees to meet with the Union to discuss the effects of such contracting out. This meeting will not be considered mid-term bargaining but a discussion of how all aspects of the current agreement will be applied (i.e. layoffs, payouts of accrued benefit time).

**6. DURATION OF AGREEMENT**

The parties both proposed a Contract Duration of three years. The Duration language offered by the City and the Union is identical and provides that the Contract shall remain in full force and effect until June 30, 2019.

**RECOMMENDATION**

It is the recommendation of this fact-finder that the Duration Provision provide for a three year Agreement which is to remain in effect until June 30, 2019.

DURATION – Three (3) year Agreement until June 30, 2019.

**CONCLUSION**

In conclusion, this fact-finder hereby submits the above referred to recommendations on the outstanding issues presented to him for his consideration.

**OCTOBER 11, 2016**

**JAMES M. MANCINI /s/**  
**James M. Mancini, Fact-Finder**